



U.S. SMALL BUSINESS ADMINISTRATION

WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act)
)
Competitive Bidding)

Comments of the Chief Counsel for Advocacy
of the United States Small Business Administration
on the Further Notice of Proposed Rulemaking

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September 16, 1994

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OFFICE OF THE SECRETARY

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On July 29, 1994, an historic event took place at the Omni Shoreham Hotel in Washington, DC. The Federal Communications Commission (Commission or FCC) awarded licenses for the use of spectrum through competitive bidding rather than by lottery or comparative hearing. This was the first auction to occur pursuant to legislative authorization of competitive bidding in the Title VI of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 712 (codified as amended at 47 U.S.C. § 309(j)). The auction of 10 separate spectrum blocks for the provision of nationwide narrowband personal communication (PCS)¹ services garnered bids totalling more than \$615 million from the winners.

¹ Narrowband spectrum will be utilized to provide advanced paging services such as two-way paging, message confirmation, and longer text messages. Narrowband personal communication services is essentially an auxiliary service to current paging technology while broadband personal communication services is a new mobile voice and data transmission service. For ease of reference, these comments will simply refer to narrowband and broadband PCS.

Although the auction of narrowband PCS spectrum was a spectacular success,² the results were somewhat troubling to the Commission. As the days of the auction progressed, it became obvious that designated entities³ did not have the financial wherewithal to compete against well-established and generously-financed paging operators. No designated entity obtained a license for one of the ten nationwide narrowband PCS licenses. The FCC has examined that experience and determined that changes need to be made in future auctions for narrowband PCS.⁴

The Commission has proposed to dramatically alter the narrowband auction process for MTA and BTA licenses. In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Further Notice of Proposed Rulemaking, *reprinted in* 59 Fed. Reg. 44,109 (August 26, 1994) (FNPR). Specifically, the FCC is proposing to adopt

² As Chairman Hundt noted, no industry estimate came close to the actual bid total.

³ Section 309(j) of the Communications Act requires that special provisions in the auctions be made for small, women, minority-owned businesses and rural telephone companies -- so-called designated entities.

⁴ The Commission still must auction licenses for narrowband services in major trading areas (MTA) and basic trading areas (BTA). These areas are congruous with the license areas delineated by the Commission for broadband PCS. In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Memorandum Opinion and Order ¶¶ 52-62 (June 13, 1994).

wholesale the procedures established for the auctioning of broadband PCS.⁵

An entrepreneurial block will be delineated in which only those firms of less than \$125 million can bid on designated blocks of spectrum for MTA and BTA licenses. FNPR at ¶¶ 19-24. The Commission also proposes to provide a sliding scale of bidding credits for firms in the entrepreneurial block based on the size and type of firm. *Id.* at ¶ 15. The Commission also proposes to permit installment payments in which initial year payments may be limited to interest. *Id.* at ¶¶ 29-35. To reduce initial costs of entering the auction, the FCC proposes to lower the upfront payment costs from \$.02 per pop⁶ to \$.015 per pop. *Id.* at ¶ 37. Finally, the Commission proposes to adopt the definitions of designated entities developed for the Fifth Report and Order. *Id.* at ¶¶ 38-55.

The Office of Advocacy cannot endorse strongly enough the proposals of the Commission. Unlike broadband PCS, narrowband PCS will allow participants into the market with significantly

⁵ In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, *reprinted in* 59 Fed. Reg. 37,566 (July 22, 1994) (hereinafter Fifth Report and Order).

⁶ Each pop is equivalent to one person that can be served by the narrowband PCS provider although that pop need not be a subscriber to the service. Thus, at \$.02 per pop the entry fee for the auction of a 1,000,000 million person BTA would be \$20,000.

lower buildout costs. Thus, the main impediment to entry by designated entities is the cost of acquiring the license. As was demonstrated in the auction of nationwide licenses, heavily financed firms were willing to go to great lengths in order to acquire the licenses they required to implement their business strategies. Adoption of the auction procedures outlined in the Fifth Report and Order as elucidated in the FNPR will go a long way to alleviating potential entry barriers for designated entities as a result of competing with large firms in the MTA and BTA auctions.

The Commission requested comments on whether "we should prohibit licensees in the entrepreneurs' blocks from voluntarily assigning or transferring control of their licenses for a period of three years from the date of the license grant." *Id.* at ¶ 22. The Office of Advocacy fully supports an imposition of such transfer restriction unless certain exceptional circumstances, such as those spelled out in footnote 20 of the FNPR are met. The Office of Advocacy also endorses a proscription against a firm that obtained an entrepreneur's spectrum block from transferring that block to an entity that would not have been eligible to participate in the entrepreneurs' auction.⁷ These limitations on transfer will help ensure that participants in the

⁷ The Office of Advocacy takes no position on whether partitioning of narrowband service territories is appropriate.

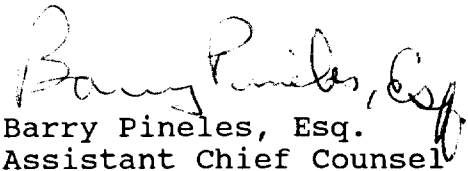
entrepreneur auctions are truly interested in providing narrowband PCS operations.

The Office of Advocacy commends the FCC for its diligent efforts to meet the often polar objectives of the competitive bidding process. The changes proposed by the Commission in the FNPR, while not guaranteeing opportunities for designated entities, will certainly provide an increased probability that designated entities will participate in the narrowband PCS marketplace.

Respectfully submitted,



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